IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

WP(C).No. 21788 of 2007(R)

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OS.614/2006 of I ADDL.M.C.,ERNAKULAM

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PETITIONERS:

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1. P.U. ZIYAD, AGED 43 YEARS,
   ADVOCATE, S/O. P.S.USUPH, RESIDING AT FLAT NO.23,
   JOURNALIST COLONY, KALOOR, ERNAKULAM VILLAGE,
   KANAYANNUR TALUK.

2. K.B. JOSHY, AGED 53 YEARS,
   S/O. BHASKARAN, RESIDING AT FLAT NO.43,
   JOURNALIST COLONY, -DO- -DO-.

BY ADV. SRI.P.S.USUPH
SRI.T.SAJI

RESPONDENTS:

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1. RAJAN, AGED ABOUT 54 YEARS,
   FLAT NO.41, JOURNALIST COLONY, KALOOR,
   ERNAKULAM, KOCHI-17.

2. MRS. SUMATHI, AGED 50 YEARS,
   W/O. RAJAN, -DO- -DO-.

3. THE GREATER COCHIN DEVELOPMENT AUTHORITY
   (GCDA), KADAVANTHRA, ELAMKULAM VILLAGE,
   REPRESENTED BY THE SECRETARY G.C.D.A.,ERNAKULAM.

4. V. SURESH,
   FLAT NO.37, JOURNALIST COLONY, KALOOR, KOCHI-17.

5. JOHNSON,
   FLAT NO.35 -DO- -DO-.

6. JOHN P.X., FLAT NO.12, -DO- -DO-.

7. K.K. GOPALAN,
   FLAT NO.21, -DO- -DO-.

8. JOSE JOSEPH,
FLAT NO.27, -DO- -DO-.

9. BABU PAUL,
FLAT NO.32, -DO- -DO-.

BY ADV. SRI.P.R.RAMACHANDRA MENON, SC,GCDA FOR R3
SRI.L.GOPALAKRISHNAN POTTI FOR R1 & R2
SRI.A.DINESH RAO
SRI.V.J..JUSTIN FOR R4 TO R9

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

# Appendix

Petitioners' Exts:

Ext.P1 True photocopy of the plaint in OS 614/2006 of the 1st Addl. Munsiff Court, Ernakulam.

Ext.P2 True photocopy of the written statement filed by defendants 1 and 2 in OS 614/2006 do. do.

Ext.P3 true photocopy of the written statement filed by defendant No.3 in do. do.

Ext.P4 True photocopy of the written statement filed by Addl. defendants 4 to 9 do. do.

Ext.P5 True photocopy of the IA 4933/2007 filed in do. do.

Ext.P6 True photocopy of the order in IA 4933/2007 in do. do.

Ext.P7 The true photocopy of the issues dated 30.3.2007 in OS 614/2006 of the Ist Addl. Munsiff Court, Ernakulam.

Ext.P8 The true photocopy of the B diary in OS 614/2006 of do. do.

**M.N.Krishnan, J.**

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**W.P(C).No.21788 of 2007**

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**Dated this the 31st day of October, 2007.**

**JUDGMENT**

This Writ Petition is filed seeking to set aside Ext.P6 order. The suit relates to a huge building consisting of 72 flats. The suit was filed in a representative capacity before the Vacation Court along with an application under Order 1 Rule 8 of C.P.C., which was allowed by the Vacation Court. Subsequently, the defendants entered appearance and filed written statement before the court and also a counter claim. The court framed an issue whether the suit and the counter claim are bad for non-joinder of necessary parties.

2. The plaintiffs in the suit moved an application for review of the order whereby the court directed the plaintiff to take steps on issue No.2. The court in the said review application held that all the flats owners are necessary parties and it appears that the court has taken the view that a direction to the plaintiffs to issue notice to all the 72 flat owners is to be given. It is against that

decision, the plaintiffs have come up with this Writ Petition.

3. One cannot find fault with the court for raising an issue of non-joinder when a pleading is raised in the written statement to that effect. But when the court is having an order in the file whereby an application under Order 1 Rule 8 of C.P.C. is allowed and publication is produced, it has to consider whether individual notices are necessary because Order 1 Rule 8 of C.P.C. permits filing of a suit in a representative capacity. Competency to file a suit in a representative capacity is a matter that has to be adjudicated if dispute on that count is raised. It is also to be held that under Order 1 Rule 9 and Rule 13 of C.P.C. the question of mis-joinder and non-joinder cannot be a sole reason for non-suiting the plaintiffs and it enables the court to have a hearing of question of non-joinder, so that such technical objection shall not be a ground for defeating the claim of the plaintiffs.

4. But unfortunately in this case everything is done on a review application, which may not be strictly in accordance with law and I therefore direct the writ petitioners to file an application pointing out all these details and the contentions that in the light of permission granted under Order 1 Rule 8 of C.P.C.,

the question of non-joinder of necessary parties may not arise and therefore, that issue may have to be recast. Certainly, the other side may file their objections and resist the said application and the court after hearing both sides, shall decide positively on the point whether the other persons are to be impleaded or not and then give a chance to the plaintiffs to rectify the mistake if it finds and thereafter proceed in accordance with law. The contention by the defendants that permission under Order 1 Rule 8 of C.P.C. will not have any legal force also be considered while considering that application.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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